

1 WILMER CUTLER PICKERING HALE AND
2 DORR LLP

3 SONAL N. MEHTA (SBN 222086)
4 sonal.mehta@wilmerhale.com
2600 El Camino Real, Suite 400
Palo Alto, CA 94306 USA
Telephone: 650 600 5051

5 HUNTON ANDREWS KURTH LLP
6 Ann Marie Mortimer (State Bar No. 169077)
amortimer@HuntonAK.com
7 Jason J. Kim (State Bar No. 221476)
kimj@HuntonAK.com
8 Jeff R. R. Nelson (State Bar No. 301546)
jnelson@HuntonAK.com
550 South Hope Street, Suite 2000
9 Los Angeles, California 90071-2627
Telephone: (213) 532-200
Facsimile: (213) 532-2020

10 Attorneys for Plaintiff
11 Facebook, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND/SAN FRANCISCO DIVISION**

15 FACEBOOK, INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 BRANDTOTAL LTD., an Israeli corporation, and
19 UNIMANIA, INC., a Delaware corporation,

20 Defendants.

Case No. 3:20-CV-07182-JCS

**PLAINTIFF FACEBOOK INC.'S
ADMINISTRATIVE MOTION TO SET
SCHEDULE RE: MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Hon. Joseph C. Spero

Pursuant to Local Civil Rule 6-3 and 7-11, Defendant Facebook, Inc. respectfully asks this Court to set the following briefing schedule concerning Defendants’ motion for a temporary restraining order (“TRO”) filed today, Friday October 16 at 6:08 pm: (1) Facebook’s opposition to Defendants’ motion shall be due on Friday, October 23, 2020; (2) Defendants’ reply to Facebook’s opposition shall be due on Tuesday, October 27, 2020; and (3) the motion shall be heard at the Court’s convenience.

Defendants’ TRO raises complex legal and factual issues relating to multiple causes of action and important public interest and policy implications, including as to the user privacy concerns implicated by federal statute and related authorities. The TRO also puts at issue technical questions regarding the conduct challenged by Facebook in this lawsuit, and which BrandTotal seeks to continue via its TRO, including BrandTotal’s use of its browser extension to scrape user data from the Facebook and Instagram platforms in violation of Facebook’s terms and policies and law. Facebook respectfully submits that it should be given a reasonable opportunity to submit—and importantly that the Court will benefit from—briefing on these complex issues and supporting evidence.

A fair opportunity for briefing is particularly appropriate here because Defendants themselves delayed in seeking a TRO. According to Defendants, they have been suffering the claimed harm for the last two weeks. *See* Declaration of Jason J. Kim in Support of Plaintiff Facebook Inc.’s Administrative Motion To Set Schedule Re: Motion For Temporary Restraining Order (“Kim Decl.”), Ex. D (October 16, 2020 email from counsel for Defendants claiming that “time is of the essence,” but acknowledging “[o]ur client’s data has been shutoff for two weeks.”). Nonetheless, Defendants waited until October 8 before even raising the possibility that they would be seeking a temporary restraining order, Kim Decl. ¶ 3. Defendants then waited more than a week to file their request for a TRO. Kim Decl. ¶ 4.¹ Given this delay, Defendants cannot credibly claim that they would be harmed if Facebook is allowed just one week to respond to Defendants’ motion.

Pursuant to Local Rule 7-11, Facebook attempted to obtain a stipulation from Defendants regarding a reasonable briefing schedule for Defendants’ request for a TRO. Defendants’ rejected Facebook’s proposed schedule and Facebook’s offer to discuss alternative schedules. *See* Kim Decl. ¶¶

¹ Defendants claim that they delayed filing their motion for a temporary restraining order “based on Facebook’s request,” but, from the first time they raised the issue, Defendants were in no rush to file their motion for a TRO. *See* Kim Decl. ¶¶ 4-6.

8-9. The burden of Defendants' unwillingness to cooperate should not prejudice Facebook's ability to prepare a response to the TRO that will be most helpful to the Court in adjudicating these issues.

In view of the above, Facebook respectfully requests that this Court set the following schedule: (1) Facebook's opposition to Defendants' motion shall be due on Friday, October 23, 2020; (2) Defendants' reply to Facebook's opposition shall be due on Tuesday, October 27, 2020; and (3) the motion shall be heard at the Court's earliest convenience. Alternatively, if Defendants are eager to have the TRO resolved more quickly notwithstanding their decision to wait until today to file the request, Facebook respectfully submits that Court give Facebook until Thursday, October 22 to file its opposition and order Defendants to forego a reply such that the motion could be heard on Friday, October 23, if convenient for the Court.

Dated: October 16, 2020

Respectfully submitted,

By: /s/ Sonal N. Mehta
Sonal N. Mehta